Order Code RL33402

CRS Report for Congress

Side-by-Side Description of Small Business Health Insurance Proposals

May 1, 2006

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Prepared for Members and Committees of Congress

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Summary

The 109th Congress is considering a number of health insurance reforms intended to improve access to health insurance for small businesses. Two of those proposals, S. 2510, the Small Employers Health Benefits Program Act of 2006, and S. 1955, the Health Insurance Marketplace Modernization and Affordability Act of 2006, take different approaches to addressing perceived problems with the current market for health insurance.

S. 1955, introduced by Senators Michael Enzi and Ben Nelson, was approved by the Senate Health, Education, Labor, and Pensions (HELP) Committee on March 15, 2006. The purpose of the bill is to expand health insurance access and reduce costs through the establishment of small business health plans, and the implementation of uniform health insurance standards across state lines. The bill would establish Small Business Health Plans that would be offered by trade and professional associations and franchise networks. In addition, the bill takes on regulatory reform of health insurance products, market-wide. It would create federal standards for benefits, the pricing of health plans, and a number of other particular areas of health insurance law. In those areas, state laws could be preempted.

S. 2510, introduced by Senators Richard Durbin and Blanche Lincoln on April 5, 2006, has a similar purpose in that it proposes to improve access to health insurance, although it has an entirely different approach. The bill would establish a national health insurance program to offer private health benefits to small business employees. The program would be based on the features of the Federal Employees Health Benefits Program (FEHBP), and would be run alongside that program by the federal Office of Personnel Management (OPM). In addition, S. 2510 includes provisions intended to improve the affordability of health insurance, including tax credits for small employers who contribute a significant share of certain employees' premiums, and a re-insurance fund that would pay for certain very high claims.

This report provides a side-by-side comparison of these two bills. This report will be updated in the event of major legislative activity.

For a discussion of small group health insurance and current legislative proposals, see CRS Report RL31963, *Association Sponsored Health Plans: Legislation in the 109th Congress*, by (name redacted).

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Background

Small employers face a number of disadvantages relative to larger employers when seeking to provide health insurance as a benefit to their employees. While most surveys suggest that the high cost of health insurance is the primary reason[1] that more than 40% of small firms[2] do not offer health benefits, there are other barriers as well. Small employers

- cannot leverage their size in negotiations with insurance carriers over benefits and prices, like larger groups can;
- do not benefit from administrative economies of scale — for example, it is less costly for an insurer to market to and enroll one large employer with 500 workers than to market to and enroll 150 smaller employers with a total of 500 workers; and
- employ lower-wage workers and workers who move among firms more often than employees of large firms — factors that also affect coverage rates in the small group markets for insurance.

A significant contributor to the relatively higher cost of coverage for small employers is their size. Smaller employers often face higher premiums than larger employers for similar coverage[3] because the size of the group does not allow for broad spreading of risk. For example, an employer with 500 employees is able to balance the risk that a few employees will have very expensive medical claims during the year with the certainty that the remaining employees will have closer to average or lower cost claims. A small employer, however, doesn't have the large number of average or low-cost enrollees to balance the risk that one or more of its workers will have expensive medical needs. Consequently, insurers charge higher premiums to smaller employers to account for this phenomenon.[4]

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[1] P. Fronstin, and R. Helman, *Small Employers and Health Benefits: Findings from the 2003 Small Employer Health Benefits Survey*, EBRI Issue Brief No. 253, Employee Benefit Research Institute (January 2003), at [http://www.ebri.org/pdf/briefspdf/0103ib.pdf].

[2] *Employer Health Benefits, 2005 Annual Survey*, The Kaiser Family Foundation and Health Research and Educational Trust, at [http://www.kff.org/insurance/7315/index.cfm].

[3] U.S. General Accounting Office, *Private Health Insurance: Small Employers Continue to Face Challenges in Providing Coverage*, GAO-02-8, Oct. 2001.

[4] For more information on the basic principles of health insurance, see CRS Report RL32237, *Health Insurance: A Primer*, by (name redacted).

Finally, large employers are often able to self-insure their own health coverage rather than purchase insurance from traditional insurance carriers or health maintenance organizations. When large employers do so, their health coverage plans are not subject to states' laws regulating the business of health insurance. As a result, the plans are not subject to a myriad of state laws regulating the prices of the plans for participating employees, the benefits covered by those plans, or the financial solvency, to name a few areas of state insurance law. The relative regulatory burden for small employers is seen by some as an additional disadvantage for smaller employers seeking low-cost plans because it adds to the cost and complexity of products in the small group market for insurance.

Small Business Health Insurance Proposals

The 109th Congress is considering a number of health insurance reforms intended to improve access to health insurance for small businesses.[5] Two of those proposals, S. 2510, the Small Employers Health Benefits Program Act of 2006, and S. 1955, the Health Insurance Marketplace Modernization and Affordability Act of 2006, take different approaches to addressing perceived problems with the current market for health insurance.

S. 1955, introduced by Senators Michael Enzi and Ben Nelson, was approved by the Senate Health, Education, Labor, and Pensions (HELP) Committee on March 15, 2006. The purpose of the bill is to expand health insurance access and reduce costs through the establishment of small business health plans, and the implementation of uniform health insurance standards across state lines. The bill would establish small business health plans that trade and professional associations and franchise networks could offer to their members. In addition, the bill takes on regulatory reform of health insurance products, market-wide. It would create federal standards for benefits, the pricing of health plans, and a number of other particular areas of health insurance law. In those areas, state laws could be preempted.

S. 2510, introduced by Senators Richard Durbin and Blanche Lincoln on April 5, 2006, has a similar purpose in that it proposes to improve access to health insurance, although it has an entirely different approach. The bill would establish a national health insurance program to offer private health benefits to small business employees. The program would be based on the features of the Federal Employees Health Benefits Program (FEHBP), and would be run alongside that program by the federal Office of Personnel Management (OPM). In addition, S. 2510 includes provisions intended to improve the affordability of health insurance, including tax credits for small employers who contribute a significant share of certain employees' premiums, and a re-insurance fund that would pay for certain very high claims.

The following description is based on a review of S. 2510 as introduced in the Senate on April 5, 2006, and S. 1955, as reported.

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Comparison of S. 2510, the Small Employers Health Benefits Program Act of 2006, and S. 1955, the Health Insurance Marketplace Modernization and Affordability Act of 2006

General Provisions

	S. 2510 **Small Employers Health Benefits Program Act of 2006** (Introduced on April 5, 2006)	**S. 1955** **Health Insurance Marketplace Modernization and Affordability Act of 2006** (Reported by Senate HELP on April 27, 2006)
Type of reform approach:		
— Pooling	*Section 3* S. 2510 would establish a new, federally administered health insurance program to offer private health benefits to individuals across the nation who are employees of small businesses. The program, the Small Employers Health Benefits Program (SEHBP), is modeled after the Federal Employees Health Benefits Plan (FEHBP), but would be administered and funded separately.	*Title I* S. 1955 would amend the Employee Retirement and Income Security Act of 1974 (ERISA) to establish small business health plans (SBHPs) through which small and large employers and certain self-employed individuals could purchase health insurance.
— Regulatory reforms outside of pools	No provision.	*Titles II and III* S. 1955 would amend the Public Health Service Act (PHSA) to establish "harmonized" health insurance regulation in three general areas: federal rating requirements, benefit choice standards, and other harmonized regulatory reforms.

	S. 2510 **Small Employers Health Benefits Program Act of 2006** (Introduced on April 5, 2006)	**S. 1955** **Health Insurance Marketplace Modernization and Affordability Act of 2006** (Reported by Senate HELP on April 27, 2006)
Scope	*Section 2* S. 2510 would affect SEHBP plans offered to small and mid-size groups: firms with 1-100 workers, including the self-employed.	Title I would affect all employers purchasing health insurance through sponsors of SBHPs — which would be offered predominantly by trade and professional associations, chambers of commerce, and franchise networks. Title II, Part I would affect all health insurance products sold to small employer groups. Title II, Part II and Title III would affect all health insurance products.
Federal role/ **Preemption of state laws**	*Section 4* S. 2510 applies the minimum benefit standards under FEHBP to SEHBP plans. For any nationwide health plan, the Office of Personnel Management (OPM) would develop a benefit package that meets all state benefit mandates. *Section 6* The act establishes federal rating rules: community rating adjusted for geography, family composition and size, and age. Federal rules preempt application of state rating rules only in those states where current rules are less stringent than the federal rules. States with stricter rating rules may keep their rules. SEHBP plans must comply with state benefit mandates. The act preempts state rules regarding pre-existing condition exclusion limits. The act allows insurers to exclude coverage for pre-existing conditions for up to six months, reduced by the	*Title I* S. 1955 would preempt the application of state laws in the areas of rating of health plans and benefits standards, for plans sold by SBHPs *Titles II and III* In states that adopt the federal standards, state laws would apply and states would retain regulatory authority over health insurance products. In states that do not adopt the federal standards, insurers may choose to follow the federal regulatory scheme. Once those insurers have notified the state insurance department that they are offering coverage consistent with the federal standards, states' laws in the areas of rate and form filing, market conduct, prompt payment of claims, and internal review could be preempted. Other state laws not in those areas would continue to apply.

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	equivalent number of days the individual had health coverage prior to applying to SEHBP. Other state health insurance laws, such as grievance and appeals procedures and network adequacy laws, continue to apply.	
Regulatory authority	*Section 3* S. 2510 gives OPM the authority to administer the new program, including development of enrollment methods, contracting administrative functions, and prescribing regulations to apply FEHBP rules, to the extent possible, to carriers, employers, and workers participating in SEHBP. *Section 6* S. 2510 maintains state authority over health plans, except with respect to (1) rating rules in states with less stringent rules than those under SEHBP, (2) pre-existing condition exclusion limits, and (3) small business definition.	*Title I* The authority to certify SBHPs would be with the Secretary of the Department of Labor (DOL). States would retain authority over SBHPs in all but two general areas: rating of plans and benefits requirements. In those two areas, the federal regulatory authority would otherwise be with the Secretary of DOL. *Title II* In all states, states would retain authority over areas of insurance law except with respect to rating of plans, benefits requirements, rate and form filing, market conduct, prompt payment of claims, and internal review. In states that adopt the federal standards in those areas, states would retain all regulatory authority. In states that do not adopt the federal standards, the Secretary of Health and Human Services (HHS) would have authority over premium rating, benefits standards, rate and form filing, market conduct, prompt payment of claims, and internal review.

Pooled Purchasing for Health Plans

	S. 2510 **Small Employers Health Benefits Program Act of 2006** (Introduced on April 5, 2006)	**S. 1955** **Health Insurance Marketplace Modernization and Affordability Act of 2006** (Reported out of Senate HELP Committee on March 15, 2006)
Pooling mechanism	*Section 3* New health insurance pool under the SEHBP.	*Title I* Association-sponsored health plans called Small Business Health Plans (SBHPs)
Sponsorship	*Section 2* Participating small employers (1-100 workers) sponsor coverage under SEHBP. *Section 10* This section includes a description of responsibilities for employers participating in SEHBP. OPM would prescribe regulations regarding employer participation.	*Title I — new ERISA Section 801* SBHPs may be sponsored by bona fide trade associations, industry associations, professional associations, chambers of commerce and franchise networks that are organized for substantial purposes other than that of obtaining medical care. The bill includes a number of other requirements for plan sponsors, including board membership, fiduciary duty, and non-discrimination rules.
Administrative approval of participating plans	*Sections 3 and 4* S. 2510 authorizes OPM to contract with qualified insurers and approve (and withdraw approval of) plans under SEHBP.	*Sections 101 and 103* The Secretary of DOL would be responsible for the certification (and the revocation of such certification when necessary) of SBHPs. The bill includes provisions deeming certain plans as SBHPs when the Secretary fails to act on a certification application within a certain timeframe. In addition, certain arrangements that have been in existence for more than 10 years and that cover more than 200 employers are deemed to be SBHPs upon filing an application for certification. States would continue to apply any applicable laws relating to

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		solvency and funding standards. It is unclear how this process would coordinate with the federal certification process.
Who is eligible to enroll in the pools?	*Section 5* Employees of participating small businesses and the self-employed who are not eligible for FEHBP.	*Section 101 — new ERISA Sections 804 and 805* Employers with two or more employees who are members of the plan sponsors must be allowed to enroll. In states that do not require issuers of group health plans to guarantee the availability of at least one plan option to individuals who are self-employed, SBHPs would not be required to do so.
Benefit standards	*Section 4* S. 2510 applies the minimum benefit standards under FEHBP to SEHBP plans. For any nationwide health plan, OPM would develop a benefit package that meets all state benefit mandates. *Section 6* SEHBP plans must comply with state benefit mandates.	*Title I — new ERISA Section 805* No explicit benefit standard is described, although this section would allow SBHPs to choose to offer benefits consistent with the Benefit Choice Standards described in Title II — Part II, described below. These provisions would allow SBHPs to offer to participating employers, a "basic option" plan that need not comply with state mandates combined with an "enhanced option" plan which would be required to include, at a minimum, the benefits, services, and categories of providers covered by a state employee health plan in one of the five most populous states. For more information on the Benefit Choice Standard, see below.
Rating requirements	*Section 6* The act establishes federal rating rules: community rating adjusted for geography, family composition and size, and age. Insurers would use OPM-established age brackets to adjust rates up to +/- 50% the community rate for attained age. Age-adjusted premiums	*Title I — new ERISA Section 805* SBHPs would be prohibited from varying contribution rates for any participating employer in relation to the health status of employees or their dependents or the type of business or industry, but may base such rates on claims experience so long as the

	S. 2510 **Small Employers Health Benefits Program Act of 2006** (Introduced on April 5, 2006)	**S. 1955** **Health Insurance Marketplace Modernization and Affordability Act of 2006** (Reported out of Senate HELP Committee on March 15, 2006)
	would not vary within brackets. Rate adjustments based on health status related factors, gender, class of business, or claims experience would be prohibited. States with stricter rating rules may keep their rules.	variation is consistent with the provisions of the "Model Small Group Rating Rules," with certain exceptions. Those rules are described in Title II — Part I of the bill and generally limit premium variation based on an NAIC model act for 1993. For a more detailed description of the rating requirements in Title II, see below. Exceptions for SBHPs include restrictions on rate bands between classes of business to within 20% of an index rate and provisions limiting the number of classes of businesses.
Other insurance laws	*Section 6* The bill would allow insurers to exclude coverage for pre-existing conditions for up to six months, reduced by the equivalent number of days the individual had health coverage prior to applying to SEHBP. Other state health insurance laws, such as grievance and appeals procedures and network adequacy laws, continue to apply.	*Title I — new ERISA Section 808* The bill would preempt state laws insofar as they establish rating and benefit requirements. All other state laws are intended to continue to apply. It is unclear how this provision would apply to patient protections that do not require the offering of certain benefits, but establish a standard for coverage for plans that include certain benefits.
Employer subsidies	*Section 15 — new Internal Revenue Code Section* 36 The bill would provide refundable tax credits to qualified employers who make substantive contributions (at least 60% for self-only policies, 50% for all others) for health coverage on behalf of their low-wage workers. Tax credit amounts are calculated based on the annual wages of covered employees, among other variables. Full tax credits would be provided to covered workers with wages between $5,000 and $25,000. Tax credits would be reduced for wages exceeding $25,000 annually,	No provision.

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	and phased out completely at $30,000. Bonus tax credits will be awarded to employers who participate during the program's first year, or cover more than 60% of the total premium.	
Insurer incentives	*Section 7* Applies 3% risk corridor to insurer gains/losses during first three years of the program. Establishes and operates a reinsurance fund to cover up to 80% of the amount in claims exceeding $50,000.	No provision.
Effective date	*Section 16* This act would become effective beginning calendar year 2007.	*Section 103* The SBHP provisions would become effective 12 months after the date of enactment. The Secretary of DOL would be required to issue all regulations within six months after the date of enactment.

Regulation of Health Insurance Outside of Pools

	S. 2510 **Small Employers Health Benefits Program Act of 2006** (Introduced on April 5, 2006)	**S. 1955** **Health Insurance Marketplace Modernization and Affordability Act of 2006** (Reported out of Senate HELP Committee on March 15, 2006)
In general	The provisions of S. 2510 apply only to SEHBPs. There are no provisions regarding health insurance laws and regulations *outside* of SEHBP.	*Titles II and III* Titles II and III of S. 1955 would effectively replace state health insurance laws across the board in three general areas; pricing of health plans, benefits standards, and other plan requirements such as rate and form filing, market conduct, prompt payment of claims, and internal review. The three separate sections of the bill are referred to as "federal rating requirements," "benefit choice standards," and "regulatory harmonization." The bill would maintain each state's authority over all other areas of health insurance regulations including the licensing of health insurance plans. (The bill, however, includes in the regulatory harmonization section a provision directing the Health Insurance Consensus Standards Board — see further description below — to develop a process for eligible insurers to "self-certify.")

	S. 2510 **Small Employers Health Benefits Program Act of 2006** (Introduced on April 5, 2006)	**S. 1955** **Health Insurance Marketplace Modernization and Affordability Act of 2006** (Reported out of Senate HELP Committee on March 15, 2006)
Plans subject to federal rules	No provision.	*Titles II and III* States would choose to adopt or not adopt the federal rating requirements, benefits choice standards, and regulatory harmonization (which would include rate and form filing, market conduct, prompt payment of claims, and internal review). In non-adopting states, however, state laws in these areas would be preempted. So insurers, regardless of whether they are operating in adopting or non-adopting states, have the choice to use existing state laws or the federal rules.
Rating requirements	No provision.	*Title II — Part I* This part would establish "Model Small Group Rating Rules" that states could choose to adopt instead of their existing laws related to rating in the small group market for health insurance. If states do not adopt this standard, however, insurers in those non-adopting states selling policies in the small group market could choose to adopt the federal rating requirements after notifying the Secretary of DOL and the state of their intention. The federal standard would be based on the National Association of Insurance Commissioners' (NAIC) "Adopted Small Employer Health Insurance Availability Model Act of 1993." The rules would establish limits on premium variation for new policies, and on the amount that premium rates could increase upon renewal of existing policies. The risk factors that an insurer in the small group market would be allowed to use to differentiate among covered groups and to vary premiums based on those differences

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		would be specified. This part also requires the Secretary to promulgate "Transitional Model Small Group Rating Rules" to help states transition from existing state rating laws to the federal model.
Benefit choice standards	No provision.	*Title II — Part II* This section describes federal benefit standards that states could choose to adopt. If states do not adopt this standard, however, insurers in those non-adopting states selling policies in the group and individual markets could choose to adopt the federal benefit standards after notifying the Secretary of DOL and the state of their intention. The federal standard would be comprised of a "basic option" plan that need not comply with state mandates regarding covered benefits, services, or categories of providers. Those insurers offering a basic option must also offer to purchasers an "enhanced option" plan which would be required to include, at a minimum, the benefits, services, and categories of providers covered by a state employee health plan in one of the five most populous states (CA, TX, NY, FL, or IL). The Secretary would be required to publish, no later than three months after enactment and each year thereafter, in the *Federal Register*, the benefits, services and categories of providers covered in those five states' coverage plans.

	S. 2510 **Small Employers Health Benefits Program Act of 2006** (Introduced on April 5, 2006)	**S. 1955** **Health Insurance Marketplace Modernization and Affordability Act of 2006** (Reported out of Senate HELP Committee on March 15, 2006)
Regulatory harmonization	No provision.	*Title III* Would require the Secretary, in consultation with the NAIC, to establish the "Health Insurance Consensus Standards Board" to develop recommendations that harmonize inconsistent state laws applying to health insurance plans sold in the group and individual markets in the following four areas: rate and form filing, market conduct, prompt payment of claims, and internal review. This section describes the membership and administration of the Board, and processes by which the Board will operate. The Board would be required to submit its recommendations to the Secretary no later than 18 months after all members of the Board have been selected. Once the Board makes its recommendations, the Secretary would be required to certify and issue the standards through the regulatory process. Similar to the rating and benefit requirements, states could choose to adopt these harmonized standards. If they do not, insurers selling policies in the group and individual markets could choose to follow the federal standards upon notification of the Secretary of DOL and the state.
Effective dates	The bill would become effective on the date of enactment and would apply to contracts for calendar year 2007 and thereafter.	*Title II — new PHSA Section 2913(c)* The federal rating requirements would become effective for the first plan year or calendar year following the issuance of final rules by the Secretary of HHS under the Model Small Group Rating Rules or the Transitional Model Small Group Rating rule — but not earlier than 12 months after the date of enactment.

	S. 2510 **Small Employers Health Benefits Program Act of 2006** (Introduced on April 5, 2006)	**S. 1955** **Health Insurance Marketplace Modernization and Affordability Act of 2006** (Reported out of Senate HELP Committee on March 15, 2006)
		Title II — new PHSA Section 2922(b) The benefit choice standards would become effective, with respect to SBHPs, 12 months after the date of enactment, and for all other health insurance products, 15 months after the date of enactment. *Title III — new PHSA Section 2932(d)(3)* The regulatory harmonization standards would become effective 18 months after the date on which the Board adopts the harmonized standards.

Other Provisions

	S. 2510 **Small Employers Health Benefits Program Act of 2006** (Introduced on April 5, 2006)	**S. 1955** **Health Insurance Marketplace Modernization and Affordability Act of 2006** (Reported out of Senate HELP Committee on March 15, 2006)
Financing	*Section 3* Participating employer and employee contributions would cover premium amounts. *Section 14* Authorizes appropriations of such sums as are necessary to establish and administer the new program described in this bill.	*Title III — new PHSA Section* 2935 Authorizes an appropriation of such sums as are necessary to carry out the provisions of Titles II and III of S. 1955.
Civil actions/available remedies	No provision.	*Titles II and III — new PHSA Sections 2914, 2924, 2934* Allows an insurer to sue for relief against state officials who violate the federal preemption rules.
Studies	*Section 13* OPM would be required to submit reports to Congress about OPM's pubic education campaign one year and two years after implementation of that campaign.	*Title II — new PHSA Section 2915* The Secretary would be required to submit a report to Congress every five years that assesses the impact of the federal model for rating premiums on access, cost, and market functioning in the small group market. *Title III — new PHSA Section 2932(f)* The Secretary would be required to submit a report to Congress every three years that assesses the impact of the harmonized standards on access, cost, and market functioning.